

EXECUTIVE OFFICER SUMMARY REPORT
August 13, 2003

ITEM: 18

SUBJECT: **PUBLIC HEARING:** Administrative Assessment of Civil Liability against Pioneer Builders for violations of the State board's General construction Storm Water Permit Order No. 99-0-DWQ, San Diego Region Basin Plan, and Cleanup and Abatement Order No. R9-2003-158 at the Castillo del Mar subdivision in Dana Point, California. If the discharger elects to waive their right to a hearing, the matter will be rescheduled to allow for a 30-day public review period at which time the Regional Board will consider assessment of civil liability. (Tentative Order No. R9-2003-0301) (Rebecca Stewart)

PURPOSE: To receive testimony from Pioneer Builders, Inc, Regional Board and interested parties regarding the allegations and recommendations of civil liability contained in Complaint No. R9-2003-270 (*Document No. 2*).

PUBLIC NOTICE: On June 16, 2003, a notice was published in the Orange County Register informing the public of the proposed enforcement action against Pioneer Builders. Public notification for this item was also provided via the Regional Board Agenda Notice for the August 13, 2003 meeting.

DISCUSSION: On June 12, 2003, the Executive Officer issued Complaint No. R9-2003-270 for assessment of civil liability against Pioneer Builders, Inc (Pioneer Builders) proposing a monetary penalty of \$139,800. Complaint No. R9-2003-270 alleges that Pioneer Builders:

- (1) Caused or threatened to cause a condition of pollution, contamination, or nuisance, from Jan 24 to March 10, 2003 (recommended penalty of \$66,000).
- (2) Failed to develop and implement adequate erosion and sediment control best management practices between March 10 and April 15, 2003 (recommended penalty of \$36,000).
- (3) Failed to submit a complete section 401 Water Quality Certification Application in violation of Cleanup Order No R9-2003-158 (recommended penalty of \$33,000).

- (4) Failed to file a Notice of Intent for coverage under the State Board's general construction storm water NPDES permit from March 10 to April 10, 2003 (recommended penalty of \$4,800).

The Complaint was issued subsequent to the Board's May 14, 2003 public hearing on Cleanup and Abatement Order No. R9-2003-158. During the hearing, the Regional Board affirmed the Cleanup and Abatement Order with modification requested by Pioneer Builders' to create a constructed wetland within the construction site as an alternative to restoration of the wetland in its historic location. At the hearing the Board also directed staff to consider further enforcement action against Pioneer Builders.

On June 12, 2003, the Executive Officer issued the ACL complaint and subsequently met with Pioneer Builders on July 10, 2003 to discuss the allegations contained in the Complaint and the procedural process related to the upcoming ACL public hearing. Recently, Pioneer Builders submitted two requests to postpone the public hearing on this matter, initially stating they needed additional time to respond to the allegations in the Complaint and subsequently because of a conflict with their attorney's vacation plans. The Executive Officer denied these requests because: 1) there appears to have been adequate opportunity to review the Complaint, which was issued in mid-June and 2) due to the uncertainty of the State budget crisis and the possible lack of a quorum at future Regional Board meetings. However, the Executive Officer did extend the due date for submission of written comments from July 21 to July 30, 2003 to allow Pioneer Builders additional time to submit a response to the allegations contained in the Complaint.

As of July 30, 2003, no written correspondence providing factual comments on the alleged violations has been received. However the Regional Board has received numerous e-mails from interested persons relating to this matter. A coalition of local citizens has requested "designated party status" which could allow them more time to address the Regional Board and the opportunity for rebuttal. State Board legal counsel has recommended that the Regional Board deny this request based on the position that the only interested parties with regards to the imposition of civil liability is the Regional Board and the discharger.

A tentative Order recommending assessment of liability will be included in the supplemental mailing. Copies of comments received and Regional Board responses to significant comments will also be in the supplemental mailing.

LEGAL CONCERNS: None.

SUPPORTING
DOCUMENTS:

- (1) Location Map
- (2) Complaint No. R9-2003-270.
- (3) Technical Analysis, Proposed Administrative Civil Liability Contained in Complaint No. R9-2003-270, Pioneer Builders, Inc.

RECOMMENDATION: The assessment of liability proposed in Complaint No. R9-2003-270. The final recommendation on amount of liability may be modified based on information received.